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**Texas Occupations Code**  
**Title 3. Health Professions**  
**Subtitle M. Regulation of Other Health Professions**  
**Chapter 502. Marriage and Family Therapists**

*Formerly codified as Vernon's Texas Civil Statutes, Article 4512c-1*  
*Enacted by the 72<sup>nd</sup> Texas Legislature effective September 1, 1991*  
*Re-codified into the Texas Occupations Code effective September 1, 1999*

*An Act relating to licensing and regulation of Marriage and Family Therapists and duties of the Texas State Board of Examiners of Marriage and Family Therapists; authorizing fees to meet expenses necessary to administer the Act, requiring an annual audit and certain reports; defining certain offenses and providing penalties.*

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**Texas Administrative Code**  
**Title 22. Examining Boards**  
**Part 35. Marriage and Family Therapists**  
**Chapter 801. Licensure and Regulation of Marriage and Family Therapists**  
**New Amendments effective April 27, 2003**

*The rules relating to licensing and regulation of Marriage and Family Therapists and Marriage and Family Therapist Associates.*

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**Texas State Board of Examiners of Marriage and Family Therapists**  
**Professional Licensing and Certification Division**  
**Texas Department of Health**  
**1100 West 49th Street**  
**Austin, Texas 78756-3183**  
**Phone #: (512) 834-6657**  
**E-mail: [Andrew.Marks@mft.tdh.state.tx.us](mailto:Andrew.Marks@mft.tdh.state.tx.us)**  
**Website: <http://www.tdh.state.tx.us/hcqs/plc/mft.htm>**

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## **Chapter 801 Marriage & Family Therapists**

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## **SUBCHAPTER A. INTRODUCTION**

**§801.1 Purpose.** The purpose of this chapter is to implement the provisions in the Licensed Marriage and Family Therapist Act, Occupations Code, Chapter 502, concerning the licensure and regulation of marriage and family therapists.

**§801.2. Definitions.** The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise.

(1) Act - The Licensed Marriage and Family Therapist Act relating to the licensing and regulation of marriage and family therapists, Occupations Code, Chapter 502.

(2) Administrative Law Judge (ALJ) - A person within the State Office of Administrative Hearings who conducts hearings under this subchapter on behalf of the Board.

(3) APA - The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(4) Associate - A licensed marriage and family therapist associate.

(5) Board - The Texas State Board of Examiners of Marriage and Family Therapists.

(6) Completed application - The official marriage and family therapy application form, fees and all supporting documentation which meets the criteria set out in §801.73 of this title (relating to Required Application Materials).

(7) Contested case - A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(8) Department - The Texas Department of Health.

(9) Family systems - An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(10) Formal hearing - A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

11) Group supervision - Supervision that involves a minimum of three and no more than six marriage and family supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five minutes.

(12) Individual supervision - Supervision of no more than two marriage and family therapy supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five minutes.

(13) Investigator - A professional complaint investigator employed by the Texas Department of Health.

(14) License - A marriage and family therapist license, a marriage and family therapist associate license, or a provisional marriage and family therapist license.

(15) Licensed marriage and family therapist - An individual who offers to provide marriage and family therapy for compensation.

(16) Licensee - Any person licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

(17) Licensed marriage and family therapist associate - An individual who offers to provide marriage and family therapy for compensation under the supervision of a board-approved supervisor.

(18) Marriage and family therapy - The rendering of professional therapeutic services to individuals, families, or married couples, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction within the context of therapy.

(19) Month - A calendar month.

(20) Party - Each person, governmental agency, or officer or employee of a governmental agency named by the Administrative Law Judge (ALJ) as having a justiciable interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(21) Person - An individual, corporation, partnership, or other legal entity.

(22) Pleading - Any written allegation filed by a party concerning its claim or position.

(23) Regionally accredited institutions - An institution accredited by one of the following accreditation associations will be accepted for licensing purposes: Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, and Western Association of Schools and Colleges.

(24) Recognized religious practitioner - A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally cognizable church, denomination or sect, or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26, Code of Federal Regulation 1.6033-2, subsection (g)(5)(I), (1982);

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(25) Rules - The rules in this chapter are covering the designated policies and procedures of operation for the board and for individuals affected by the Act.

(26) Supervision - The guidance or management in the provision of clinical services.

(27) Supervisor - A person meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements), to supervise an associate and/or marriage and family therapist.

(28) Texas Open Meetings Act - Government Code, Chapter 551.

(29) Texas Open Records Act - Government Code, Chapter 552.

(30) Therapist - For the purposes of this chapter, a Texas licensed marriage and family therapist.

(31) Waiver - The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions.

## **SUBCHAPTER B. THE BOARD**

### **§801.11. The Board.**

(a) **Membership.** The board is composed of nine members appointed by the governor. Four members must be selected from the general public. Five members must be eligible for licensure under the Act, at least one of whom must be a professional educator in marriage and family therapy. These members must have engaged in the practice or education of marriage and family therapy for at least five years, or have 5,000 hours of clinical experience in the practice of marriage and family therapy.

(b) **Terms.** Members of the board hold office for staggered six-year terms. Three members' terms expire February 1 of each odd-numbered year.

(c) **Vacancies.** In the event of a vacancy, the governor shall appoint a replacement who meets the qualifications of the vacated office to fill the unexpired part of the term.

(d) **Elections.** At the meeting held nearest to August 31 of each year, the board shall elect a vice-chair by a majority vote of the members present.

#### **(e) Officers**

(1) **Chair.** The chair shall be appointed by the governor and will serve at the will of the governor.

(A) The chair shall preside at all meetings at which he or she is in attendance and shall perform all duties prescribed by law and board rules.

(B) The chair is authorized by the board to make minor procedural decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board. The executive director shall keep a tabulation of the minor procedural decisions and include them in the executive director's report to the board.

(C) The chair shall sign the approved minutes of each meeting.

#### **(2) Vice-Chair.**

(A) The vice-chair shall perform the duties of the chair in the absence or disability of the chair.

(B) Should the office of the chair become vacant, the vice-chair shall serve until a successor is named.

(f) Committees. The chair may appoint board members to committees to assist the board in its work. All committees appointed by the chair shall consist of no more than four members and shall make reports to the board at regular meetings. The board shall direct all such reports to the executive director for distribution.

(g) Compensation. No member of the board may receive compensation for serving on the board. Each member is entitled to the per diem set by legislature for each day that the member performs functions as a member of the board.

(h) Meetings.

(1) Agendas.

(A) The executive director or the executive director's designee shall prepare and submit to each member of the board an agenda which includes items required by law, items requested by members, and other matters of board business which have been approved by the chair.

(B) The official agenda of a board meeting shall be filed with the Texas secretary of state as required by the Texas Open Meetings Act.

(C) Any individual wishing to be on the agenda to present or speak on a specified topic at a meeting of the board must provide a written request to the executive director in time to be placed on the agenda which describes the topic to be addressed. The chair may limit as appropriate the time for public participation.

(2) Frequency of Meetings. The board shall meet at least biannually and may meet at other times as the chair deems necessary. All meetings shall be conducted in accordance with the Texas Open Meetings Act.

(3) Attendance. If a member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during the calendar year, unless the absence is excused by majority vote of the board, a potential ground for removal from the board may exist. The chair shall notify the governor that a potential ground for removal exists. The attendance records of the members may be made available to the governor of the State of Texas and/or the Texas Sunset Advisory Commission.

(4) Rules of parliamentary procedure. All official decisions made by the board shall be made according to parliamentary procedure as set forth in the latest edition of Robert's Rules of Order Revised. If a question arises concerning interpretation of the latest edition of Robert's Rules of Order Revised, the chair, or acting chair will make the decision.



(5) Transaction of official business. The board may transact official business only when it is legally constituted meeting with a quorum present. Five members of the board constitute a quorum.

(i) The board shall not be bound in any way by any statement or action on the part of any board member, subcommittee member, or staff member, except when a statement or action is in pursuance of the specific instruction of the board.

(j) Training. A training program shall be available for the members of the board. At least one training course of this program must be completed before a member of the board may assume duties on the board. The board shall use the training program of the Health Professions Council.

#### **§801.12. Petition for the Adoption of a Rule.**

(a) Purpose. The purpose of this section is to delineate the board procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing; shall state the petitioner's name, address, and telephone number; and shall contain the following:

(A) a brief explanation of and justification for the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the proposed rule is to be promulgated; and

(D) the public benefit anticipated as a result of adopting the proposed rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The petition shall be filed with the board office.

(4) The executive director or the executive director's designee may determine that the petition does not contain the information described in paragraph (2) of this subsection and return the petition to the petitioner.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the executive director shall submit a completed petition to the board for consideration.

(2) Within 60 days after the receipt of the petition, the board shall deny the petition or institute rulemaking procedures in accordance with the Administrative Procedure Act (APA), Government Code, 2001.021. The board may deny parts of the petition or institute rulemaking procedures on parts of the petition.

(3) If the board denies the petition, the board shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(4) If the board initiates rulemaking procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section. The board may refuse to consider a subsequent petition for the adoption of the same or similar rule submitted within six months after the date of an initial petition.

#### **§801.13. Executive Director.**

(a) The commissioner of health shall appoint an employee of the Texas Department of Health as executive director for the board after consultation with the board members.

(b) The executive director, or the executive director's designee, shall keep the minutes of the meetings and proceedings of the board and shall be the custodian of the files and records of the board.

(c) The executive director shall exercise general supervision over individuals employed in the administration of the Act, at the direction of the board or the commissioner of health.

(d) The executive director shall be responsible for the preliminary information regarding complaints and for the presentation of the formal complaints to the board. A committee may be appointed for extensive investigation.

(e) The executive director shall handle all correspondence for the board and obtain, assemble, or prepare reports and information that the board may modify or authorize.

(f) The executive director or the executive director's designee shall have the responsibility of assembling and reviewing materials submitted by applicants for licensure. Determinations made by the executive director or the executive director's designee are subject to the approval and/or modification of the board, which shall make the final decision regarding the eligibility of the applicants.

(g) The executive director or the executive director's designee may serve as the administrator of licensure examinations, as directed by the board or the commissioner of health.

(h) The executive director shall sign the approved minutes of each meeting.

#### **§801.14. Official Records.**

(a) All official records of the board, except files containing information considered confidential under the provisions of the Texas Open Records Act, shall be open for public inspection during regular office hours.

(b) A person desiring to examine official records shall be required to identify himself or herself and sign statements listing the records requested and examined.

(c) Official records shall not be taken from board offices; however, persons may obtain copies of files upon written request and by paying the cost per page set by the General Services Commission and the Texas Department of Health.

#### **§801.15. Impartiality and Nondiscrimination.**

(a) The board shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, gender, national origin, age, disability, sexual orientation, or genetic information.

(b) Any board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or specialty or in a disciplinary action against a licensee shall so declare this to the board and shall not participate in any board proceedings involving that applicant or licensee.

#### **§801.16. Policy on Disabled Applicants.**

(a) The board recognizes that disabled applicants may encounter unusual problems in applying for licensure or taking the examination and will make an effort to accommodate these applicants.

(b) The board, on an individual basis, may consider requests for special arrangements for disabled applicants including assistance in taking the examination provided that such requests are reasonable and do not violate this Act or this chapter.

**§801.17. License Certificate.**

(a) The board shall prepare and provide to each therapist a license certificate which contains the licensee's name and license number.

(b) Any license certificate issued by the board remains the property of the board and must be surrendered to the board upon demand.

**§801.18. Directory.**

(a) Each year the board shall publish a directory of therapists.

(b) The directory shall include, but not be limited to, the name, preferred mailing address, and telephone number(s) of current licensees.

(c) The board shall make the directory information available to each licensee, and upon request, shall provide copies to other state agencies and the public.

**§801.19. Fees.**

(a) The board has established the following fees for licenses, license renewals, examinations, and all other administrative expenses under the Licensed Marriage and Family Therapists Act (Act).

(b) The schedule of fees shall be as follows:

(1) application fee - \$40;

(2) licensure examination fee -- shall be in accordance with the current contracted examination fee;

(3) licensure fee - \$45;

(4) renewal fee - \$65;

(5) late renewal fee -- late renewal fees shall be set as follows:

(A) on or before 90 days - renewal fee plus one-half of the current contracted examination fee --; and

(B) longer than 90 days but less than one year - renewal fee plus fee equal to the current contracted examination fee--;

- (6) inactive status (administrative) fee- \$75;
- (7) duplicate license fee - \$10;
- (8) associate licensure fee - \$80;
- (9) provisional licensure fee - \$40; and
- (10) continuing education sponsor fee -- \$50 annually;
- (11) child support reinstatement fee -- \$40;
- (12) verification fee -- \$10; and
- (13) student loan default reinstatement fee -- \$40.

(c) All fees are non-refundable.

(d) Remittances submitted to the board in payment of fees must be in the form of a cashier's check, money order, personal check, or company check.

(e) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. All fee changes shall be made through rulemaking procedures.

## **SUBCHAPTER C. RENDERING PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS**

### **§801.41. Purpose and Scope.**

(a) The purpose of this subchapter is to provide guidelines regarding the rendering of professional therapeutic services and to implement the provisions of the Act, concerning a code of ethics.

(b) The scope of this subchapter establishes standards of professional and ethical conduct required of a therapist.

**§801.42. Rendering Professional Therapeutic Services.** The following are professional therapeutic services which are part of marriage and family therapy when the services involve the professional application of family systems theories and techniques in the delivery of the services:

(1) marriage therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples through the changing marriage life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of either partner;

(2) sex therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies in the resolution of sexual disorders;

(3) family therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective, and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a family member;

(4) child therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in the stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a child;

(5) play therapy which utilizes systems, methods, and processes which include play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as part of the therapist's role in helping children overcome their social, emotional, and mental problems;

(6) individual psychotherapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the developmental life span. These family system approaches assist in stabilizing and alleviating mental, emotional or behavioral dysfunctions in an individual;

(7) divorce therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive behavioral, developmental, psychodynamic,

affective and family system methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of the partners;

(8) mediation which utilizes systems, methods, and processes to facilitate resolution of disputes between two or more dissenting parties, including but not limited to any issues in divorce settlements, parenting plan modifications, parent-child conflicts, pre-marital agreements, workplace conflicts, and estate settlements. Mediation involves specialized therapeutic skills that foster cooperative problem solving, stabilization of relationships, and amicable agreements. Court appointed mediation requires specialized training;

(9) group therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment throughout the life span;

(10) chemical dependency therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective methods and strategies, and 12-step methods to promote the healing of the client;

(11) rehabilitation therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society;

(12) referral services which utilizes systems methods and processes which include evaluating and identifying needs of clients to determine the advisability of referral to other specialists, and informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources. This includes social studies and family assessments of the individual within the family;

(13) diagnostic assessment which utilizes the knowledge organized in the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as the International Classification of Diseases (ICD) as part of their therapeutic role to help individuals identify their emotional, mental, and behavioral problems when necessary;

(14) psychotherapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness;

(15) hypnotherapy which utilizes systems methods and processes which include the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions;

(16) biofeedback which utilizes systems methods and processes which include electronic equipment to monitor and provide feedback regarding the individual's physiological responses to stress. The therapist who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the therapist's academic program or the substantial equivalent provided through continuing education;

(17) assessment and appraisal which utilizes systems methods and processes which include formal and informal instruments and procedures, for which the therapist has received appropriate training and supervision in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems; and

(18) consultation which utilizes systems, methods, and processes which include the application of specific principles and procedures in consulting to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations.

**§801.43. Professional Representation.**

- (a) A therapist shall not misrepresent any professional qualifications or associations.
- (b) A therapist shall not misrepresent any agency or organization by presenting it as having attributes which it does not possess.
- (c) A therapist shall not make unreasonable, misleading, deceptive, fraudulent, exaggerated, or unsubstantiated claims about the efficacy of any services.
- (d) A therapist shall not encourage, or within the therapist's power, allow a client to hold exaggerated ideas about the efficacy of services provided by the therapist.

**§801.44. Relationships with Clients.**

- (a) A therapist shall make known to a prospective client the important aspects of the professional relationship including fees and arrangements for payment which might affect the client's decision to enter into the relationship.
- (b) No commission or rebate or any other form of remuneration shall be given or received by a therapist for the referral of clients for professional services.



(c) A therapist shall not use relationships with clients to promote, for personal gain or for the profit of an agency, commercial enterprises of any kind.

(d) A therapist shall not engage in activities that seek to meet the therapist's personal needs instead of the needs of the client.

(e) Under normal circumstances a therapist shall not be involved in the therapy of family members, intimate friends, close associates, or others whose welfare might be jeopardized by such a dual relationship.

(f) A therapist shall be responsible for setting and maintaining professional boundaries.

(g) A therapist may disclose confidential information to medical or law enforcement personnel if the therapist determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(h) In group therapy settings, the therapist shall take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(i) A therapist shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of five years for an adult client and 5 years beyond the age of 18 years of age for a minor.

(j) A therapist shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.

(k) A therapist shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from it.

(l) A licensee who engages in interactive therapy via the telephone or internet must provide the client with his/her license number and information on how to contact the board by telephone or mail, and must adhere to all other provisions of this chapter.

#### **§801.45. Sexual Misconduct.**

(a) The following words and terms when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Mental health services - The assessment, diagnosis, treatment, or therapy in a professional relationship to assist an individual or group in:

(A) alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction;

(B) understanding conscious or subconscious motivations;

(C) resolving emotional, attitudinal, or relationship conflicts; or

(D) modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning.

(2) Mental health services provider - A licensee or any other licensed or unlicensed individual who performs or purports to perform mental health services, including a licensee under the provisions of the Act.

(3) Sexual Contact:

(A) deviate sexual intercourse as defined by Penal Code, §21.01;

(B) sexual contact as defined by Penal Code, §21.01;

(C) sexual intercourse as defined by Penal Code, §21.01;

(D) requests by a licensee for conduct described by subparagraph (A), (B), or (C) of this paragraph.

(4) Sexual exploitation - A pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a client's sexual history within standard accepted practice.

(5) Therapeutic deception - A representation by a licensee that sexual contact with, or sexual exploitation by, the licensee is consistent with, or a part of, a client's or former client's therapy.

(b) A licensee shall not engage in sexual contact with a person who is:

(1) a client;

(2) a former client with whom there has been no therapeutic contact for a minimum of two years;

(3) an associate or an intern for whom the licensee has administrative or clinical responsibility;

(4) an intern in a marriage and family therapy graduate program in which the licensee offers professional or educational services; or

(5) a supervisor of the licensee.

(c) A therapist shall not provide therapeutic services to a person with whom the therapist has had a sexual relationship.

(d) A licensee shall not practice therapeutic deception or sexual exploitation.

(e) Because sexual contact with former clients are so frequently harmful to the client, and because such contacts undermine public confidence in the marriage and family therapy profession and thereby deter the public's use of needed services, marriage and family therapists do not engage in sexual contact with former clients even after a two year interval except in the most unusual circumstances. The marriage and family therapists who engages in such activity after the two years following cessation or termination of therapy bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including:

(1) the amount of time has passed since therapy terminated;

(2) the nature and duration of the therapy;

(3) the circumstances of termination;

(4) the client's personal history;

(5) the client's current mental status;

(6) the likelihood of adverse impact on the client and others; and

(7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the client.

(f) It is not a defense under subsections (b)-(d) of this section, if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred:

(1) with the consent of the person;

(2) outside the therapy or treatment sessions of the person; or

(3) off the premises regularly used by the licensee for the therapy or treatment sessions of the person.

(g) Examples of sexual exploitation are:

(1) sexual harassment, sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature and:

(A) is offensive or creates a hostile environment, and the licensee knows or is told this; or

(B) is sufficiently severe or intense to be abusive to a reasonable person in the context;

(2) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual;

(3) inappropriate sexual comments about or to a person, including making sexual comments about a person's body;

(4) making sexually demeaning comment to or about an individual's sexual orientation;

(5) making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in therapy or treatment;

(6) requesting details of sexual history or sexual likes and dislikes when not necessary for therapy or treatment of the individual;

(7) initiating conversation regarding the sexual likes and dislikes when not necessary for therapy or treatment of the individual;

(8) kissing or fondling;

(9) making a request to date;

(10) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature;

(11) any bodily exposure of genitals, anus, or breasts;

(12) encouraging a client, student, associate, or former client to masturbate in the presence of the licensee; and

(13) masturbation by the licensee when a client, student, associate, or former client is present.

(h) Examples of sexual contact are:

- (1) genital and genital contact;
- (2) genital and anal contact;
- (3) genital and oral contact;
- (4) genital and any object contact;
- (5) anal and any object contact;
- (6) touching breasts;
- (7) touching genitals;
- (8) touching anus; and
- (9) touching buttocks.

(i) A licensee shall report sexual misconduct as follows.

(1) If a licensee has reasonable cause to suspect that a client has been the victim of a sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during therapy or any other course of treatment, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or mental health services provider during therapy or any other course of treatment, the licensee shall report alleged misconduct not later than the 30th day after the date the licensee became aware of the misconduct or the allegations to:

(A) the district attorney in the county in which the alleged sexual exploitation, sexual contact, or therapeutic deception occurred;

(B) the board if the misconduct involves a licensee; and

(C) any other state licensing agency which licenses the mental health services provider.

(2) Before making a report under this subsection, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous

(3) A report under this subsection need contain only the information needed to:

(A) identify the reporter;

(B) identify the alleged victim, unless the alleged victim has requested anonymity;

(C) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and

(D) provide the name of the alleged perpetrator.

**§801.46. Testing.**

(a) A therapist shall make known to clients the purposes and explicit use to be made of any testing done as part of a professional relationship.

(b) A therapist shall not appropriate, reproduce, or modify published tests or parts thereof without the acknowledgment and permission of the publisher.

(c) A therapist shall not administer any test without the appropriate training and experience to administer the test.

(d) A therapist must observe the necessary precautions to maintain the security of any test administered by the therapist or under the therapist's supervision.

**§801.47. Drug and Alcohol Use.** A therapist shall not abuse the use of alcohol or drugs, use illegal drugs of any kind, or promote, or encourage the illegal use or possession of alcohol or drugs.

**§801.48. Confidentiality.**

(a) A therapist shall follow the rules of confidentiality set forth in the Health and Safety Code, Chapter 611, and other applicable laws.

(b) A therapist shall retain and dispose of client records in such a way that confidentiality is maintained.

**§801.49. Therapists and the Board.**

- (a) Any person licensed as a therapist is bound by the provisions of the Act and this chapter.
- (b) A therapist shall report alleged misrepresentations or violations of this chapter to the board's executive director.
- (c) The licensee shall report name changes, address changes, employment setting changes, etc. to the board.
- (d) The board is not responsible for any lost or misdirected mail if sent to the address last reported by the licensee.
- (e) The board may ask any applicant for licensure as a therapist whose file contains negative references of substance to come before the board for an interview before the licensure process may proceed.
- (f) The board may consider the failure of a therapist to respond to a request from the board or executive director for information or other correspondence as unprofessional conduct and grounds for disciplinary proceedings in accordance with Subchapter L of this chapter (relating to Complaints and Violations).
- (g) Applicants for licensure shall not use current members of the board as references.

**§801.50. Assumed Names.**

- (a) An individual practice by a therapist may be incorporated in accordance with the Professional Corporation Act or other applicable law.
- (b) When an assumed name is used in any practice of therapy, the name of the therapist must be listed in conjunction with the assumed name. An assumed name used by a therapist must not be false, deceptive, or misleading.

**§801.51. Consumer Information.**

- (a) A licensee shall inform each client of the name, address, and telephone number of the board for the purpose of reporting violations of the Act or this chapter as follows:
  - (1) on each application or written contract for services;
  - (2) on a sign prominently displayed in the primary place of business; or

(3) on a bill for therapy services provided to a client or third party.

(b) The board shall prepare information of consumer interest which describes the regulatory functions of the board and board procedures for handling and resolving complaints.

(c) The board shall make consumer information available to the public and appropriate state agencies.

**§801.52. Display of License Certificate.**

(a) A therapist shall display the license certificate and annual renewal card, issued by the board, in a prominent place in the primary location of practice.

(b) A therapist shall display only an original of the license certificate or annual renewal card issued by the board.

(c) A therapist shall not make any alteration on a license certificate or annual renewal card issued by the board.

(d) A therapist shall not display a license certificate or renewal card issued by the board which has been reproduced or is expired, suspended, or revoked.

**§801.53. Advertising and Announcements.**

(a) Information used by a therapist in any advertisement or announcement of services shall not contain information which is deceptive, inaccurate, incomplete, or out of context. Only the highest academic degree earned from an accredited college or university and relevant to the profession of therapy or a therapy-related field shall be used when advertising or announcing therapeutic services to the public or in therapy-related professional representations. A therapist may advertise or announce his or her other degrees from accredited colleges or universities if the subject of the degree is specified.

(b) The board imposes no restrictions on advertising by a therapist with regard to the use of any medium, the therapist's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a therapist, or the use of a trade name.

(c) All advertisements or announcements of therapeutic services including telephone directory listings by a person licensed by the Board shall clearly state the therapist's licensure status by the use of a title such "Licensed Therapist", or "Licensed Marriage and Family Therapist", or "L.M.F.T.", "Licensed Marriage and Family Therapist Associate" or "LMFT-A", or a statement such as "licensed by the Texas State Board of Examiners of Marriage and Family Therapists".



(d) A therapist shall not include in advertising or announcements any information or any reference to certification in a field outside of therapy or membership in any organization which may be confusing or misleading to the public as to the services or legal recognition of the therapist.

**§801.54. Research and Publications.**

(a) In research with a human subject, a therapist is responsible for the subject's welfare throughout a project and shall take reasonable precautions so that the subject shall suffer no injurious emotional, physical, or social effect.

(b) A therapist shall disguise data obtained from a therapeutic relationship for the purposes of education or research to ensure full protection of the identity of the subject client.

(c) When conducting and reporting research a therapist must give recognition to previous work on the topic as well as observe all copyright laws.

(d) A therapist must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to those who have contributed significantly to the therapist's research or publication.

**SUBCHAPTER D. APPLICATION PROCEDURES**

**§801.71. Purpose.** The purpose of this subchapter is to set out the application procedures for examination and licensure.

**§801.72. General.**

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official board forms.

(b) The board will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(c) The board will send one notice determined by the anniversary date of the filing of an application to an applicant who does not complete an application in a timely manner. An application not completed within 30 days after the date of the board's notice may be voided; however, by written request to the board, an applicant may request that his or her application be kept active for an additional year.

**§801.73. Required Application Materials.**

(a) Application form. The application form shall contain:

(1) specific information regarding personal data, employment and type of practice, other state licenses and certifications held, felony or misdemeanor convictions, educational background including direct clinical experience, supervised experience, and references;

(2) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

(3) the applicant's permission to the board to seek any information or references it deems necessary to determine the applicant's qualifications;

(4) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(5) a statement that the applicant understands that the fees submitted in the licensure process are non-refundable;

(6) the applicant's dated and notarized signature; and

(7) an official transcript.

(b) Supervised experience form. The supervised experience form must be completed by the applicant's supervisor and contain:

(1) the name of the applicant;

(2) the name, address, degree, licensure status, and credentials of the applicant's supervisor;

(3) the name and address of the agency or organization where the experience was gained;

(4) the inclusive dates of supervision provided to the applicant; the total hours of individual supervision; and the types of supervision used;

(5) the applicant's employment status during supervised experience;

(6) the types and total hours of direct, face-to-face clinical services provided to individuals, families, or couples;

(7) the supervisor's evaluation of the applicant's therapeutic skills and competence for independent or private practice; and

(8) the supervisor's notarized signature.

(c) Course work. An applicant must have the official transcript(s) showing all relevant course work sent directly to the board office.

(d) References. An applicant must have references submitted by three persons who can attest to the applicant's therapy skills and professional skills and professional standards of practice.

(1) The references shall be persons who are not named elsewhere in the applicant's application and are not current members of the board.

(2) References must include:

(A) one graduate instructor in a university, college, or post-degree training setting;

(B) one licensed marriage and family therapist; and

(C) one licensed or certified professional in a related mental health field which may include an additional licensed marriage and family therapist.

(e) Other documents. Vita, resume, and/or other documentation of the applicant's credentials may be submitted.

#### **SUBCHAPTER E. CRITERIA FOR DETERMINING FITNESS OF APPLICANTS FOR EXAMINATION AND LICENSURE**

**§801.91. Purpose.** The purpose of this subchapter is to set forth the criteria by which the board will determine the qualifications required of applicants for approval for examination and licensure.

**§801.92. Finding of Non-Fitness for Licensure.** The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of an associate license or a regular license of the applicant:

(1) lack of the necessary skills and abilities to provide adequate counseling services in independent practice;

(2) any misrepresentation in the application or other materials submitted to the Board;

(3) the violation of any provision of the Act or this chapter in effect at the time of application which is applicable to an unlicensed person; or

(4) the violation of any provision of code of ethics which would have applied if the applicant had been a licensee at the time of the violation.

**§801.93. Finding of Non-Fitness for Licensure Subsequent to Issuance of Licensure.** The board may take disciplinary action based upon information received after issuance of a license, if such information had been received prior to issuance of license and would have been the basis for denial.

## **SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE**

**§801.111. Purpose.** The purpose of this subchapter is to set out the academic requirements for examination and licensure as a marriage and family therapist.

**§801.112. General.**

(a) The board shall accept as meeting licensure requirements graduate work done at American universities which hold accreditation or candidacy status from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(b) Degrees and coursework received at foreign universities shall be acceptable only if such coursework may be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. If degrees or coursework cannot be documented because the foreign university refuses to issue a transcript or other evidence of the degrees or coursework, the board may consider accepting, on an individual basis, degrees or coursework based on other evidence presented by the foreign graduate applicant.

(c) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs, bulletins, syllabi, or by other means.

(d) The board shall count no undergraduate level courses taken by an applicant as meeting any academic requirements unless the applicant's official transcript clearly shows that the course was awarded graduate credit by the school.

(e) The board shall accept no coursework which an applicant's transcript indicates was not completed with a passing grade or for credit.

(f) In the case of coursework taken outside of a program of studies for which a degree was granted, no course in which the applicant received a grade below a “B” or “pass” shall be counted toward meeting academic requirements for examination or licensure.

(g) In evaluating transcripts, the board shall consider a quarter hour of academic credit as two-thirds of a semester hour.

**§801.113. Academic Requirements.**

(a) Persons applying for the examination must have completed or be enrolled in a marriage and family therapy graduate internship program, or its equivalent, approved by the Board.

(b) Persons applying for licensure as a marriage and family therapist or a marriage and family therapist associate must have a master's or doctorate degree in marriage and family therapy or a master's or doctorate degree in a related mental health field with course work and training determined by the board to be substantially equivalent to a graduate degree in marriage and family therapy from a regionally accredited institution of higher education or an institution of higher education approved by the board.

(c) A degree or course work in a related mental health field is substantially equivalent if it is at least 45 semester hours which the applicant completed at a regionally accredited school. The 45 semester hours may be course work taken in the required graduate degree program.

(d) A degree or course work in a related mental health field must have been designed to train a person to provide direct services to assist individuals, families or couples in a therapeutic relationship in the resolution of cognitive, affective, behavioral or relational dysfunctions within the context of marriage or family systems.

**§801.114. Academic Course Content.** An applicant having a graduate degree in a mental health related field must have course work in each of the following areas (one course equals three semester hours):

- (1) theoretical foundations of marriage and family therapy -- one course;
- (2) assessment and treatment in marriage and family therapy -- four courses;
- (3) human development, gender, multicultural issues, and family studies – two courses;
- (4) psychopathology -- one course;

- (5) professional ethics -- one course;
- (6) applied professional research -- one course; and
- (7) supervised clinical practicum -- 12 months/nine hours.

## **SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR EXAMINATION AND LICENSURE**

**§801.141. Purpose.** The purpose of this subchapter is to set out the experience requirements for examination and licensure as a marriage and family therapist.

### **§801.142. Licensure Requirements.**

(a) After receiving a passing grade on the licensure examination, receipt of a degree and course work under Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure), the applicant must have completed a minimum of two years of work experience in marriage and family therapy services that:

(1) include at least 3,000 hours of clinical services to individuals, couples or families, of which at least 1,500 hours must be direct clinical services, 750 hours to couples or families, and the remaining 1,500 hours may come from related experiences that may include but not be limited to workshops, public relations, writing case notes, consulting with referral sources, etc;

(2) must be supervised in a manner acceptable to the board, including at least 200 hours of supervision of which at least 100 hours must be individual supervision. Up to 100 of the 200 hours of supervision may be earned during the graduate program. One-half of the supervised hours after graduation must be individual supervision.

### **§801.143. Supervisor Requirements.**

(a) Supervisors are recognized by the board when subsection (a) or (b) of this section is met by submitting an application which includes the following four documents;

(1) a license (which is not a provisional or an associate license) issued by the board, a license as a marriage and family therapist in another state or territory, or submit documents to support eligibility for licensure by the board;

(2) a graduate degree in marriage and family therapy or a graduate degree in a related mental health field, such as counseling and guidance, psychology, psychiatry, and clinical social work, from a regionally accredited institution as defined in '801.2 of this title (relating to Definitions);

(3) one of the following:

(A) a one-semester graduate course in marriage and family therapy supervision from a regionally accredited institution; or

(B) an equivalent course of study consisting of a 30-hour didactic component and a 15-hour interactive component in the study of marriage and family therapy supervision approved by the Board. The interactive component must include a minimum of four persons; and

(4) at least 3,000 hours of direct client contact in the practice of marriage and family therapy over a minimum of three years.

(b) In lieu of meeting the qualifications set forth in subsection (a) of this section, a person is an acceptable supervisor if the person has been designated as an approved supervisor or supervisor-in-training by the American Association of Marriage and Family Therapy (AAMFT) before the person provides any supervision.

**§801.144. Other Conditions for Supervised Experience.**

(a) An associate may practice marriage and family therapy in any established setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(b) After January 1, 1995, no hours will be counted toward the supervised experience unless the associate was licensed by the board.

(c) A supervisor may not be employed by the person whom he or she is supervising.

(d) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(e) During the period of supervised experience, an associate may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.

(f) During the post graduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the rules.

(g) All supervision submitted in fulfillment of the board's requirements must have been on a formal basis arranged prior to the period of supervision. Supervisory arrangements

must include all specific conditions agreed to by the supervisor and associate.

(h) If an associate enters into a contract with an organization with which the supervisor is employed or affiliated:

(1) the therapeutic services shall be performed on the site(s) of the organization; and

(2) clients records shall remain the property of the organization.

(i) Group supervised experience of an associate may count toward an associate's supervision requirement only if the supervision group consisted of a minimum of three and no more than six associates during the supervision hour.

(j) Individual supervised experience of an associate may count toward the associate's supervision requirement only if the supervision consisted of no more than two associates.

(k) The 200 hours of supervision must be face-to-face. The associate must receive a minimum of one hour of supervision every two weeks. A supervision hour is 45 minutes.

(l) An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.

(m) If an associate's primary clinical employer has a contract to provide mental health services via telephonic or other electronic media, the associate may receive credit for up to 300 clock-hours toward the required 3,000 hours of clinical services, as approved by the supervisor.

## **SUBCHAPTER H. LICENSURE EXAMINATIONS**

**§801.171. Purpose.** The purpose for this subchapter is to establish the rules governing the administration, and other procedures for examination for licensure.

**§801.172. Frequency.** The board, or its designee, shall administer licensure examinations at least semi-annually or as often as deemed necessary.

**§801.173. Applying for Examination.** A person must apply for examination in accordance with Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure) and §801.73 of this title (relating to Required Application Materials). The board shall notify an applicant of application approval or disapproval, and if disapproved, state the reason.



(1) a person may apply to take the examination after he/she has:

(A) submitted the necessary forms, fee and application in accordance with §801.73 of this title; and

(B) enrolled in or completed on or after September 1, 1999 a graduate internship in marriage and family therapy or an equivalent internship as approved by the board except that a person, who prior to September 1, 1999 enrolled in a graduate internship that has not been completed, has the option of taking the examination as described above in this section or may take the examination after submitting the notarized statement(s) from their supervisor(s) documenting the completion of 1,000 hours of direct clinical contact and the 200 hours of approved supervision.

(2) at least 60 days prior to the examination, the executive director or the executive director's designee shall notify an applicant in writing that an application has been approved.

(3) an applicant who wishes to take a scheduled examination must complete an examination registration form and return it to the board.

**§801.174. Examination.**

(a) The examination shall be a written examination prescribed by the board which has been validated by an independent testing professional.

(b) An applicant shall apply to take the examination on a form prescribed by the board. The applicant will pay the examination fee at the examination site.

(c) The board, or its designee, shall determine the times and places for licensing examinations and give reasonable public notice.

(d) Examination results shall be reported as follows:

(1) The examinee shall be notified of the results of the examination within 45 days of the examination date.

(2) If the examination results will be delayed more than 60 days after the examination date, the board shall notify each examinee of the reason for the delay within 60 days of the examination date.

(e) Procedures for failure of an applicant to pass an examination are as follows:

(1) An applicant who fails an examination may retake the examination at the next scheduled date.

(2) Fee for the examination is in accordance with subsection (b) of this section.

(3) The applicant must resubmit an application.

(4) The board shall furnish the person who failed the examination with an analysis of that person's performance on the examination if so requested in writing by the examinee.

## **SUBCHAPTER I. ISSUANCE OF LICENSE**

**§801.201. Purpose.** The purpose of this subchapter is to set out licensing procedures of the board.

**§801.202. License Issuance.**

(a) The board will send each applicant whose application has been approved and who has passed the examination, an associate licensure form to complete and return with the licensure fee.

(b) Upon receiving an applicant's licensure form and fee, the board shall issue the person a license containing a license number within 30 days.

(c) The board will replace a lost, damaged, or destroyed license certificate upon a written request from the therapist and payment of the duplicate license fee. Requests must include a statement detailing the loss or destruction of the therapist's original license or be accompanied by the damaged certificate.

(d) Upon the written request and payment of the license certificate duplicate fee by a licensee, the board will provide a licensee with a duplicate license within 30 days for a second place of practice which is designated in a licensee's file.

**§801.203. Provisional License.**

(a) A provisional license may be granted to a person who:

(1) is licensed or otherwise registered as a marriage and family therapist by another state or other jurisdiction, whose requirements for licensure or registration, at the time the license or registration was obtained, were substantially equivalent to the requirements set out in §801.73 of this title (relating to Required Application Materials).

(2) has successfully passed a national examination relating to marriage and family therapy or an examination approved by the board; and

(3) is sponsored by a licensed marriage and family therapist in Texas with whom the provisional license holder may practice under this section;

(4) if licensed without examination, the applicant must submit official documentation of education and professional experience equivalent to the requirements in effect during the grandfather clause. Final approval will be made by the board or its designee;

(5) the provisional license holder provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter (relating to Experience Requirements for Examination and Licensure); and

(6) the provisional license holder meets any other requirements set forth under the Licensed Marriage and Family Therapist Act (Act).

(b) Upon formal written request, the board may waive the requirement set out in subsection (a)(3) of this section if it is determined that compliance with subsection (a)(3) of this section would cause undue hardship to the applicant.

(c) The board shall issue a license to a holder of a provisional license if:

(1) the provisional license holder passes the examination required by Subchapter H of this chapter (relating to Licensure Examinations);

(2) the provisional license holder provides an official graduate transcript meeting the requirements set forth in Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure);

(3) the provisional license holder provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter (relating to Experience Requirements for Examination and Licensure); and

(4) the provisional license holder meets any other requirements set forth under the Act.

(d) The board must complete the processing of a provisional license holder's application for license within 180 days after the provisional license was issued. The board may extend the 180-day deadline to allow for the receipt and tabulation of pending examination results.

**§801.204. Associate License.**

- (a) A temporary license shall be issued to an applicant who has:
- (1) obtained a master's or doctorate degree in marriage and family therapy or a related mental health field with course work and training equivalent to a graduate degree in marriage and family therapy as set out in §801.114 of this title (relating to Academic Course Content);
  - (2) submitted an official graduate transcript from a regionally accredited institution of higher education or an institution of higher education approved by the board;
  - (3) submitted a complete application with the application fee to the board;
  - (4) submitted a supervisory contract to the board which specifies all contractual agreements with said supervisor and that the supervisor has met the requirements of §801.143 of this title (relating to Supervisor Requirements); and
  - (5) submitted the temporary licensure fee as set out in §801.19 of this title (relating to Fees).
- (b) The associate license will be issued for a period of 36 months and may be extended for 24 months with the board's or its designee's approval.

**SUBCHAPTER J. LICENSE RENEWAL AND INACTIVE STATUS**

**§801.231. Purpose.** The purpose of this subchapter is to set out rules governing licensure renewal and inactive status.

**§801.232. General.**

- (a) A therapist must renew licensure annually.
- (b) Each therapist is responsible for renewing licensure and paying the renewal fee before the expiration date and shall not be excused from paying late renewal fees or renewal penalty fees.
- (c) A therapist must have fulfilled continuing education requirements prescribed by the board rule in order to renew licensure.
- (d) A therapist whose license is not renewed due to failure to meet all requirements for licensure renewal shall return his or her license certificate to the board and shall not advertise or represent himself or herself as a licensed marriage and family therapist in any

manner.

(e) A therapist who has been notified of a student loan default shall surrender their license until the loan payment has been resolved to the satisfaction of the National Student Loan Center.

(f) A therapist shall pay a reinstatement fee set out in §801.19 of this title (relating to fees) prior to issuance of the license under this subsection.

**§801.233. Staggered Renewals.** The board shall use a staggered system for licensure renewals.

(1) The renewal date of a license shall be the last day of the licensee's birth month.

(2) Licensure fees will be prorated if the licensee's initial renewal date as determined by the board occurs less than 12 months after the original date of licensure.

(3) Prorated fees shall be rounded off to the nearest dollar.

**§801.234. License Renewal.**

(a) At least 60 days prior to the expiration date of a person's license, the board will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, and a licensure renewal form which the licensee must complete and return to the board with the required fee.

(b) The licensure renewal form shall require the licensee to provide current addresses, telephone numbers, and other information such as continuing education completed and type of practice.

(c) The board, or its designee, shall not consider a license to be renewed until it receives the completed licensure renewal form and the renewal fee, and the licensee has complied with the continuing education requirements. No renewal fee shall be processed by the board until the licensee has met the applicable continuing education requirements. The board or its designee may grant the licensee additional time to complete continuing education requirements based on extraordinary circumstances, such as medical complications.

(d) The board shall issue a renewal card to a licensee who has met all requirements for renewal before license expiration.

(e) The license of a person who made a timely request for renewal of his or her license does not expire until the application for renewal is finally determined by the board, or

in case the application is denied or the terms of the new license limited, until the last day for seeking review of the board's order or a later date fixed by order of a reviewing court.

(f) The board will not process the licensure renewal of a licensee who is a party to formal license revocation or suspension proceedings. A formal proceeding commences when the notice described in Subchapter L of this chapter (relating to Complaints and Violations) is mailed by the board.

(1) a licensee whose license is not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.

(2) in the case of delay in the licensure renewal process because of formal licensure suspension or revocation proceeding, late renewal penalty fees shall not apply.

#### **§801.235. Late Renewal.**

(a) A person who renews a license after the expiration date but on or within 90 days after the expiration date shall pay the renewal fee plus one-half the examination fee. If a person's license has been expired for 90 days but less than one year the person may renew the license by paying to the board the renewal fee and a fee that is equal to the examination fee for licensure. A final notice will be sent 30 days after the expiration date.

(b) A person whose license was not renewed within one year of the expiration date may obtain a new license by submitting to examination and complying with the original requirements and procedures for obtaining an original license.

(c) The board may renew without re-examination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee that is equal to the examination fee for the license.

#### **§801.236. Inactive Status.**

(a) A licensee may request that his or her license be declared inactive by written request to the board prior to the expiration of the license. Inactive status periods shall not be granted to persons whose licenses are not current and in good standing. Inactive status periods shall not exceed three years; however, consecutive inactive status periods may be approved by the board. An inactive status fee is required for each three-year period of inactive status.

(b) If a licensee fails to renew his or her license because the licensee is called to or on active duty with the armed forces of the United States, the licensee or the licensee's authorized representative may request that the license be declared inactive or be renewed. A request for inactive status shall be made in writing to the board prior to expiration of the

license or within one year from the expiration date. This subsection is an exception to the requirement in subsection (a) of this section that the request be made prior to expiration of the license. A request for renewal may be made before or after the expiration date.

(1) If the request is made by the licensee's authorized representative, the request must include a copy of the appropriate power of attorney or written evidence of a spousal relationship.

(2) The written request shall include a copy of the official transfer orders of the licensee or other official military documentation showing that the licensee is called to or on active duty.

(3) The payment of the inactive status fee, late renewal fee, and a licensure renewal penalty fee is waived for a licensee under this subsection.

(4) An active duty licensee shall be allowed to renew under this subsection without proof of continuing education hours if proof is required for renewal; however, the licensee must submit proof of completion of the required number of continuing education hours by the end of the following time period. The time period shall start on the actual date of renewal of the license and be equal to the length of time the licensee was on active duty during the continuing education period or following expiration of the license. If the licensee fails to submit proof of continuing education by the end of the time period, the board may suspend or revoke or deny renewal of the license.

(5) The written request shall include a current address and telephone number for the licensee or the licensee's authorized representative.

(6) The board may periodically notify the licensee or the licensee's authorized representative that the license of the licensee remains in inactive status, if applicable.

(7) Except in extraordinary circumstances, a licensee on active duty shall notify the board that the licensee is on active duty. The board shall note in the licensee's file that the licensee may be eligible for renewal under this subsection.

(8) If a licensee is a civilian impacted or displaced for business purposes due to a national emergency or war, the licensee or the licensee's authorized representative may request that the license be declared inactive in the same manner as described in this subsection for military personnel. The written request shall include an explanation of how the licensee is impacted or displaced, which explanation shall be on the official letterhead of the licensee's business.

(c) An inactive status period shall begin on the first day of the month following board approval and payment of an inactive status fee.

(d) All privileges, fees, and continuing education requirements are not applicable during the period of inactive status. A person may not act as a therapist or represent himself or herself as a therapist during the period of inactive status.

(e) Continuing education credit cannot be earned while on inactive status.

(f) A person is subject to investigation and action under Subchapter L of this chapter (relating to Complaints and Violations) during the period of inactive status.

(g) A therapist may return to active status by written request to, and approval by, the board. Active status shall begin the first day of the month following board approval and payment of a license fee. The license fee shall be prorated to the next renewal date in accordance with §801.233 of this title (relating to Staggered Renewals).

(h) If continuing education requirements have not been met prior to the time that a therapist goes on inactive status, upon return to active status the hours that were remaining to complete the continuing education requirement described in §801.262 of this title (relating to Deadlines) must be completed in a time period equal to the time that was remaining in the therapist's cycle at the time that the therapist went into inactive status.

(i) Upon return to active status, the therapist's next continuing education cycle will begin on the first day of the month following the licensee's birth month; however, the start date for the next cycle will begin following the additional time period described in subsection (h) of this section.

#### **§801.237. Surrender of License.**

(a) Surrender by licensee. A licensee may at any time voluntarily offer to surrender his or her license for any reason, without compulsion.

(b) Acceptance by the board.

(1) The board shall decide whether to formally accept the voluntary surrender of a license.

(2) Surrender of a license without the acceptance of the board or a licensee's failure to renew the license shall not deprive the board of jurisdiction against the licensee under the Licensed Marriage and Family Therapist Act (Act) or any other statute.



(c) Formal disciplinary action. When a licensee has offered the surrender of his or her license after a complaint has been filed alleging violations of the Act or this chapter and the board has accepted such a surrender, that surrender is deemed to be the result of a formal disciplinary action.

(d) Reinstatement. A license which has been surrendered and accepted may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

## **SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS**

**§801.261. Purpose.** The purpose of this subchapter is to establish the continuing education requirements for the renewal of licensure which a therapist must complete annually. These requirements are intended to maintain and improve the quality of professional services in marriage and family therapy provided to the public and keep the therapist knowledgeable of current research, techniques, and practice and provide other resources which will improve skill and competence in marriage and family therapy. Continuing education hours must be relevant to the practice of marriage and family therapy.

**§801.262. Deadlines.** Continuing education requirements for renewal shall be fulfilled during one-year periods beginning on the first day of a therapist's renewal year and ending on the last day of the therapist's renewal year.

**§801.263. Clock -Hour Requirements for Continuing Education.** A licensee must complete 15 clock hours of continuing education acceptable to the board each year as described in §801.262 of this title (relating to Deadlines). A three-hour ethics course will be required each year.

**§801.264. Types of Acceptable Continuing Education.** Continuing education undertaken by a therapist shall be acceptable to the board as credit hours if it is offered by an approved sponsor(s) in the following categories:

(1) participation in state and national conferences such as the American Association of Marriage and Family Therapists (AAMFT) and Texas Association of Marriage and Family Therapists (TAMFT).

(2) participation in local seminars relevant to marriage and family therapy;

(3) completing a graduate or institute course in the field of marriage and family therapy;

(4) presenting workshops, seminars, or lectures relevant to marriage and family therapy (the same seminar may not be used more than once annually); and

(5) by completing correspondence courses, satellite or distance learning courses, and/or audio-video courses relative to marriage and family therapy (no more than 6 hours per year).

**§801.265. Continuing Education Sponsor.** The board is not responsible for approving individual continuing education programs. The board will approve an institute, agency, organization, association, or individual as a continuing education sponsor of continuing education units. The board will grant approval to organizations who pay the continuing education sponsor fee which shall permit the organizations to approve continuing education units for their marriage and family therapy courses, seminars, and conferences. These organizations do not need prior permission from the board but must submit an annual list of their seminars, workshops, and courses with the presenter's name to the board. Any university, professional organization, or individual who meets the required criteria may advertise as approved sponsors of continuing education for licensed marriage and family therapists.

(1) Sponsors shall verify attendance of participants and provide participants with a letter or certificate of attendance.

(2) Sponsors shall maintain all continuing education records and documentation for at least three years.

(3) Sponsors shall provide participants a mechanism for evaluation of each continuing education activity.

(4) Sponsors shall pay a continuing education sponsor fee which will be effective for one year from date of receipt.

**§801.266. Criteria for Approval of Continuing Education Activities.** Each continuing education experience submitted by a licensee will be evaluated on the basis of the following criteria.

(1) Attendance at programs shall be in accordance with §801.264 of this title (relating to Types of Acceptable Continuing Education).

(2) Completion of academic work shall be in accordance with §801.264 of this title. Official graduate transcripts from an accredited school showing completion of graduate hours in appropriate areas for which the licensee received at least a grade of "B" or "pass" is required.

(3) Credit may be earned for clinical supervision of marriage and family therapy interns and associates. Supervision may count for no more than one-half of annual continuing education.

(4) A presenter of a continuing education activity or an author of a published work which enhances a marriage and family therapist's knowledge or skill may be granted five credit hours for each presentation or publication not to exceed one-half of the annual continuing education required.

**§801.267. Determination of Clock Hour Credits.** The board shall credit continuing education as follows.

(1) Parts of programs which meet the criteria §801.264 of this title (relating to Types of Continuing Education) shall be credited on a one-for-one basis with one clock-hour credit for each clock-hour spent in the continuing education activity.

(2) A graduate course of three credit hours or an institute's course of at least 30 clock hours or other intensive training approved by the board will be accepted as two years of continuing education.

**§801.268. Submission of Continuing Education.** Continuing education units of no less than 15 hours must be reported annually by the licensee at the time of renewal. These hours will be reported on the form provided by the board. The board shall conduct an annual random audit requesting documentation of continuing education. Individual continuing education certificates of attendance shall not be submitted unless the licensee is requested to do so by the board. Continuing education credits from organizations which are not approved sponsors may be accepted if relevance to marriage and family therapy can be documented.

## **SUBCHAPTER L. COMPLAINTS AND VIOLATIONS**

**§801.291. General.** The purpose of this subchapter is to inform licensees of the valid reasons for the denial, revocation, probation, or suspension of a license, reprimand of a licensee, or imposition of an administrative penalty, and the procedures for filing complaints and allegations of statutory or rule violations.

(1) The following shall be grounds for revocation, probation or suspension of a license, imposition of an administrative penalty, or reprimand of a licensee if a licensee has:

(A) been convicted of a felony or a misdemeanor involving moral turpitude;

(B) obtained or attempted to obtain a license by fraud or deception;

(C) used drugs or alcohol to an extent that affects professional competence;

(D) been grossly negligent in performing professional duties;

(E) been adjudicated mentally incompetent by a court of competent jurisdiction;

(F) practiced in a manner detrimental to the public health or welfare;

(G) advertised in a manner that tends to deceive or defraud the public;

(H) had a license or certification revoked by a licensing agency or by a certifying professional organization;

(I) otherwise violated the Act or board rules; or

(J) committed an act for which liability exists under the Civil Practice and Remedies Code, Chapter 81.

(2) If the board suspends a license, the suspension shall remain in effect for the period of time stated in the order or until the board determines that the reason for the suspension no longer exists.

(3) If a suspension overlaps a license renewal date, the suspended marriage and family therapist shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to paragraph (2) of this subsection.

(4) Upon revocation, suspension or non-renewal of a license, a licensee shall return his or her license certificate and all existing renewal cards to the board.

**§801.292. Criteria for Denial of a License.** The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of licensure of the applicant:

(1) lack of the necessary skills and abilities to provide adequate therapeutic services;

(2) misrepresentation of professional qualifications or association;

(3) misrepresentation of services and efficacy of services to clients;

(4) use of misleading or false advertising;

(5) use of relationships with clients to promote personal gain or for the profit of an agency or commercial enterprises of any kind;

(6) engaging in sexual contact or intimacies of any kind with any client or former client except as noted in §801.45 of this title (relating to Sexual Misconduct);

(7) a breach of confidentiality of a client except where allowed by law;

(8) abuse of the use of alcohol or drugs or the use of illegal drugs of any kind;

(9) any misrepresentation in the application or other materials submitted to the board;

(10) the violation of any provision of the Licensed Marriage and Family Therapist Act or this chapter; and

(11) any other criteria listed in §801.291 of this title (relating to General).

**§801.293. Procedures for Revoking, Suspending, Probating or Denying a License, or Reprimanding a Licensee.**

(a) The board's executive director or executive director's designee will give written notice to the person that the board intends to deny, suspend, probate, or revoke the license, impose an administrative penalty, or reprimand the licensee, after a hearing in accordance with the provisions of the Administrative Procedure Act (APA), and the board's hearing procedures in Subchapter O of this chapter (relating to Formal Hearings).

(b) Prior to denying, revoking, probating or suspending a license; imposing an administrative penalty; or reprimanding a licensee, the ethics committee shall give the applicant or licensee the opportunity for an informal settlement conference or a formal hearing or both settlement conferences in accordance with the provisions of this subchapter, Subchapter N of this chapter (relating to Informal Settlement Conferences), and Subchapter O of this chapter (relating to Formal Hearings).

**§801.294. Violations by an Unlicensed Person.**

(a) A person commits an offense if he or she knowingly or intentionally acts as a therapist without being licensed by the board. Such an offense is a Class B misdemeanor.

(b) An unlicensed person who facilitates or coordinates the provision of professional services but does not act as a therapist is not in violation of the Act.

**§801.295. Power to Sue.** The board may institute a suit in its own name and avail itself of any other action, proceeding, or remedy authorized by law to enjoin the violation of the Act.

**§801.296. Complaint Procedures.**

(a) A person wishing to report a complaint or allege a violation of the Act or this chapter by a licensee or other person shall notify the executive director, Texas State Board of Examiners of Marriage and Family Therapists, 1100 West 49th Street, Austin, Texas 78756-3183, or by calling 1-800-942-5540 (for complaints only). The initial notification of a complaint may be in writing, by telephone, or by personal visit to the board office.

(b) Upon receipt of a complaint, the executive director or executive director's designee may send to the complainant an official form which the complainant should complete and return to the board office.

(c) Upon receipt of a complaint, the executive director or executive director's designee shall notify the alleged violator of the complaint within 45 days and request that the alleged violator submit a written response regarding the complaint within ten days of receipt of the notice.

(d) The executive director or executive director's designee shall collect all information related to the complaint. The chair shall appoint an ethics committee to review the complaint and the supporting documentation.

(e) The executive director or executive director's designee shall keep an information file about each complaint which will include the following:

- (1) all persons contacted in relation to the complaint;
- (2) a summary of findings made in each step of the complaint process;
- (3) an explanation of the legal basis and reason for a complaint that is dismissed; and
- (4) other relevant information.

(f) The executive director or executive director's designee shall notify the parties to the complaint of status of the complaint, on a quarterly basis, until the complaint is resolved.

(g) The ethics committee, executive director, or executive director's designee may request further investigation of the complaint. After investigation has been completed, the person completing the investigation shall submit his or her findings to the ethics committee, executive director, or executive director's designee. The written investigative report shall set out all facts obtained during the investigation.

(h) If the ethics committee determines that there are insufficient grounds to support or act upon the complaint, the ethics committee may dismiss the complaint and the executive director or executive director's designee shall give written notice of the dismissal to the complainant and the licensee or person against whom the complaint has been filed.

(i) If the ethics committee determines that there are sufficient grounds to support the complaint, the ethics committee will report to the board any proposed disciplinary actions to be taken against the licensee.

(j) If the committee determines that a violation exists and that the violation is not a serious complaint affecting the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as a cease and desist order or an informal agreement with the violator to correct the violation. The informal agreement is subject to approval by the board.

**§801.297. Monitoring of Licensees.**

(a) The executive director or executive director's designee shall maintain a complaint tracking system.

(b) Each licensee that has had disciplinary action taken against his or her license shall be required to submit regularly scheduled reports. The report shall be scheduled at intervals appropriate to each individual situation.

(c) The executive director or executive director's designee shall review the reports and notify the ethics committee if the requirements of the disciplinary action are not met.

(d) The ethics committee may consider more severe disciplinary proceedings if non-compliance occurs.

**§801.298. Default Orders.**

(a) If a right to a hearing is waived, the board shall consider an order taking disciplinary action as described in written notice to the licensee or applicant.

(b) The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) Upon an affirmative majority vote, the board shall enter an order imposing appropriate disciplinary action.

**§801.299. Administrative Penalties.**

- (a) The assessment of an administrative penalty is governed by the Act, §502.401.
- (b) References in the Act to the "commissioner of health" or the "department" are references to the commissioner of health or his designee. The board shall request that the commissioner of health appoint the executive director of the board as his designee.
- (c) References in the Act to a "hearing examiner designated by the department" are references to an administrative law judge from the State Office of Administrative Hearings.
- (d) A hearing to assess administrative penalties shall be governed by Subchapter O of this chapter (relating to Formal Hearings) except where the subchapter is in conflict with the Act, §25A.
- (e) The amount of an administrative penalty shall be based on the following criteria.
  - (1) the seriousness of a violation shall be categorized by one of the following severity levels:
    - (A) Level I - violations that have or had an adverse impact on the health or safety of a client (or former client, where applicable);
    - (B) Level II - violations that have or had the potential to cause an adverse impact on the health or safety of a client (or former client, where applicable) but did not actually have an adverse impact; or
    - (C) Level III - violations that have no or minor health or safety significance.
  - (2) The range of administrative penalties by severity levels are as follows:
    - (A) Level I - \$1,000 to \$500;
    - (B) Level II - \$500 to \$250; or
    - (C) Level III - no more than \$250.
  - (3) Subsequent violations in the same severity level for which an administrative penalty has previously been imposed shall be categorized at the next higher severity level.
  - (4) Adjustments to the range of an administrative penalty may be made for:



- (A) prompt reporting;
- (B) corrective action;
- (C) compliance history; or
- (D) multiple violations.

**§801.300. Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order.**

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, or failure to be in compliance with a court order relating to child custody, the executive director shall immediately determine if the board has issued a license to the obligator named on the order, and, if a license has been issued:

- (1) record the suspension of the license in the board's records;
- (2) report the suspension as appropriate; and
- (3) demand surrender of the suspended license.
- (4) have to pay and be in accordance with child custody.

(b) The board shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232 as added by Acts 1995, 74th Legislature Chapter 751, §85 (HB 433) and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to use the titles "licensed marriage and family therapist", "provisional licensed marriage and family therapist," or "licensed marriage and

family therapist associate" after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive director or executive director's designee shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee set out in §801.19 of this title (relating to Fees) prior to issuance of the license under subsection (g) of this section.

**§801.301. Relevant Factors.** When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which includes: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the complaint subcommittee or administrative law judge. Specific factors are to be considered as set forth herein.

(1) Seriousness of Violation. The following factors are identified:

(A) the nature of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as emotional, physical, or financial;

(B) the extent of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as whether the harm is low, moderate or severe, and the number of persons harmed or exposed to risk; and

(C) the frequency and time-periods covered by the violations, such as whether there were multiple violations, or a single violation, and the period of time over which the violations occurred.

(2) Nature of the violation. The following factors are identified:

(A) the relationship between the licensee and the person harmed, or exposed to harm, such as a dependent relationship of a client-counselor, or stranger to the licensee;

(B) the vulnerability of the person harmed or exposed to harm;

(C) the moral culpability of the licensee, such as whether the violation was:

- (i) intentional or premeditated;
- (ii) due to blatant disregard or gross neglect; or
- (iii) resulted from simple error or inadvertence; and

(D) the extent to which the violation evidences the lack of character, such as lack integrity, trustworthiness, or honesty.

(3) Personal Accountability. The following factors are identified:

- (A) admission of wrong or error, and acceptance of responsibility;
- (B) appropriate degree of remorse or concern;
- (C) efforts to ameliorate the harm or make restitution;
- (D) efforts to ensure future violations do not occur; and
- (E) cooperation with any investigation or request for information.

(4) Deterrence. The following factors are identified:

- (A) the sanction required to deter future similar violation by the licensee;
- (B) sanctions necessary to ensure compliance by the licensee of other provisions of the Act or this chapter; and
- (C) sanctions necessary to deter other licensees from such violations.

(5) Miscellaneous Factors. The following factors are identified:

- (A) age and experience at time of violation;
- (B) presence or absence of prior or subsequent violations;
- (C) conduct and work activity prior to and following the violation;
- (D) character references; and
- (E) any other factors justice may require.

**§801.302. Severity Level and Sanction Guide.** The following severity levels and sanction guides are based on the relevant factors in §801.301 of this title (relating to Relevant Factors).

(1) Level One - revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or may require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure.

(2) Level Two - extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require may termination of licensure for a period of not less than one year.

(3) Level Three - moderate suspension of license. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time less than a year.

(4) Level Four - probated suspension of licensure. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

(5) Level Five - reprimand. These violations involve inadvertent or relatively minor misconduct and/or rule violations not directly involving the health, safety and welfare of the public.

## **SUBCHAPTER M. LICENSING OF PERSONS WITH CRIMINAL BACKGROUNDS**

**§801.331. Purpose.** The purpose of this subchapter is to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain licenses as a marriage and family therapist.

### **§801.332. Criminal Conviction.**

(a) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a therapist or if the crime involves moral turpitude.

(b) In considering whether a criminal conviction directly relates to the occupation of a therapist, the board shall consider:

(1) the nature and seriousness of the crime;  
(2) the relationship of the crime to the purposes for requiring a licensee to be a therapist. The following felonies and misdemeanors relate to the license of a therapist because these criminal offenses indicate an inability or a tendency to be unable to perform as a therapist:

(A) the misdemeanor of knowingly or intentionally acting as a therapist without a license;

(B) a misdemeanor and/or a felony offense under various chapters of the Texas Penal Code:

(i) concerning Title 5, which relates to offenses against the person;

(ii) concerning Title 7, which relates to offenses against property;

(iii) concerning Title 9, which relates to offenses against public order and decency;

(iv) concerning Title 10, which relates to offenses against public health, safety, and morals; and

(v) concerning Title 4, which relates to offenses of attempting or conspiring to commit any of the offenses in clauses (i)-(v) of this paragraph; and

(3) other misdemeanors and felonies that the board may consider in order to promote the intent of the Act and this chapter;

(4) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(5) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a therapist. In making this determination, the board will apply the criteria outlined in Texas Civil Statutes, Article 6252-13c, §4(c)(1)-(7).

## **SUBCHAPTER N. SETTLEMENT CONFERENCES**

### **§801.351. Settlement Conference.**

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal settlement conference held to determine whether an agreed order may be approved.

(b) If the executive director or the ethics committee of the board determines that the public interest may be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this subchapter shall apply. A licensee or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the executive director or the ethics committee.

(c) An informal conference shall be voluntary and shall not be prerequisite to a formal hearing.

(d) The executive director shall decide upon the time, date and place of the settlement conference, and provide written notice to the licensee or applicant. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested, to the last known address of the licensee or applicant or by personal delivery. The ten days shall begin on the date of mailing or delivery. The licensee or applicant may waive the ten-day notice requirement.

(e) A copy of the board's rules concerning informal settlement conference shall be enclosed with the notice of the settlement conference. The notice shall inform the licensee or applicant of the following:

- (1) that the licensee may be represented by legal counsel;
- (2) that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;
- (3) that at least one member of the ethics committee members shall be present;
- (4) that the board's legal counsel or a representative of the Office of the Attorney General will be present;
- (5) that the licensee's or applicant's attendance and participation is voluntary; and

(6) that the complainant and any client involved in the alleged violations may be present;

(f) The notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is cancelled.

(g) At least one member of the ethics committee shall be present at a settlement conference.

(h) The settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(i) The licensee or applicant, the licensee's or applicant's attorney, the ethics committee members, the board's legal counsel, and the executive director, may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(j) The board's legal counsel or an attorney from the Office of the Attorney General shall attend each settlement conference. The ethics committee members or executive director may call upon the attorney at any time for assistance in the settlement conference.

(k) Access to the board's investigative file may be prohibited or limited in accordance with the Open Records Act, the Administrative Procedure Act (APA), and other applicable law.

(l) At the discretion of the executive director or the ethics committee members, a tape recording may be made of some or all of the settlement conference.

(m) The ethics committee members or the executive director shall exclude from the settlement conference all persons except witnesses during their testimony. The licensee or applicant, the licensee's or applicant's attorney, and board staff may remain for all portions of the settlement conference.

(n) The complainant shall not be considered a party in the settlement conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(o) At the conclusion of the settlement conference, the ethics committee member(s) or executive director may make a proposal for an informal settlement of the complaint or contested case. The proposed settlement may include administrative penalties or any

disciplinary action authorized by the Act. The ethics committee member(s) or executive director may also propose to recommend that the board lacks jurisdiction, that a violation of the Act or this chapter has not been established, that the investigation be closed for some other reason.

(p) The licensee or applicant may either accept or reject the settlement recommendations at the conference. If the recommendations are accepted, an agreed settlement order shall be prepared by the executive director, executive director's designee or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(q) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive director for appropriate action.

(r) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.

(s) The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(t) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(u) If the board does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive director for other appropriate action.

(v) A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with the APA, §2001.054(c).

(w) A licensee's opportunity for an informal conference under this subchapter shall satisfy the requirement of the APA, §2001.054(c).

(1) If the executive director or ethics committee determines that an informal conference shall not be held, the executive director or executive director's designee shall give written notice to the licensee or applicant if it has not been previously provided. The notice



will indicate facts or conduct alleged to warrant the intended disciplinary action and the licensee or applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirements of the Act and this chapter.

(2) The complainant shall be sent a copy of the written notice. The complainant shall be informed that he or she may also submit a written statement to the board office.

## **SUBCHAPTER 0. FORMAL HEARINGS.**

**§801.361. Purpose.** The purpose of this subchapter is to set forth the formal hearing procedures and practices that will be used by the board in handling denials, probations, revocations, and suspensions of licenses; reprimands of licensees; and imposition of administrative penalties and in implementing the contested case provisions of the Administrative Procedure Act.

### **§801.362. General.**

(a) The board or the appropriate committee on its own motion or on request from a licensee or applicant may initiate a formal hearing. A formal hearing and all related proceedings shall be conducted in accordance with the provision of the Administrative Procedure Act (APA), applicable state statutes, and this chapter.

(b) A formal hearing or contested case proceeding unless otherwise determined by the administrative law judge (ALJ) or upon agreement of the parties shall be held in Travis County, Texas.

(c) The broad schedule of sanctions by the board for violations of the Act or this chapter is as follows:

- (1) revocation of a license;
- (2) suspension of a license;
- (3) probation of a person whose license has been suspended;
- (4) imposition of an administrative penalty against a licensee;
- (5) reprimand of a licensee; and
- (6) denial of a license.

(d) The schedule in subsection (c) of this section does not preclude the use of settlement negotiations and agreed orders.

**§801.363. Notice**

(a) The Administrative Law Judge (ALJ) shall give notice of the formal hearing according to the notice requirements of the Administrative Procedures Act (APA).

(b) If a party fails to appear or be represented at a hearing or proceeding after receiving notice, the ALJ may proceed with the hearing or proceeding or take whatever action is fair and appropriate under the circumstances.

**§801.364. Parties to the Hearing.**

(a) The parties to a hearing shall be the applicant or licensee and the ethics committee of the board.

(b) A party has the privilege to participate fully in any prehearing and formal hearing, to appeal as provided by law, and to perform any and all duties and privileges provided by Administrative Procedure Act (APA) and other applicable laws.

(c) A party may appear personally or be represented by counsel.

**§801.365. Subpoenas.**

(a) On the written request of any party to the hearing, the executive director of the board shall issue a subpoena to require the attendance of witnesses or the production of documents. The administrative law judge may also issue any necessary subpoenas. A subpoena may be served by any person authorized to serve subpoenas under the Civil Practice and Remedies Code.

(b) All procedures relating to subpoenas shall be in accordance with the Administrative Procedure Act (APA).

(c) A party or witness may seek to quash the subpoena or move for a protective order as provided in the Texas Rules of Civil Procedure.

(d) Documents include books, papers, accounts, and similar materials or objects.

(e) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled shall be paid for mileage, transportation, meals, and lodging expenses and a fee of \$10 per day in accordance with the APA.

**§801.366. Depositions.** The taking and use of depositions in any contested case proceeding shall be governed by the Administrative Procedure Act.

**§801.367. Prehearing Conferences.**

(a) In a contested case, the ALJ, on his or her own motion or the motion of a party, may direct the parties, their attorneys, or representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of:

- (1) the formulation and simplification of issues;
- (2) the necessity or desirability of amending the pleading;
- (3) the possibility of making admissions or stipulations;
- (4) the procedure at the hearing;
- (5) specifying the number of witnesses;
- (6) the mutual exchange of prepared testimony and exhibits;
- (7) designation of parties; and
- (8) other matters which may expedite the hearing.

(b) The ALJ shall conduct the pre-hearing conference in such a manner and with the necessary authority to expedite the conference while reaching a fair, just, equitable determination of any matters or issues being considered.

(c) The ALJ shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering said matters or issues.

(d) Any action taken at the pre-hearing conference shall be reduced to writing, signed by the parties, and made a part of the record.

**§801.368. Hearing Procedures.**

(a) The administrative Law Judges (ALJ) duties. The ALJ shall preside over and conduct the hearing. On the day and time designated for the hearing, the ALJ shall:

- (1) convene and call the hearing to order;
- (2) state the purpose of and the legal authority for the hearing will be made;

- (3) announce that a record of the hearing will be made;
- (4) outline the procedure and order of presentation that will be followed;
- (5) administer oaths to those who intend to testify; and
- (6) take any and all other actions as authorized by applicable law and this subchapter to provide for a fair, just, and proper hearing.

(b) Order of presentation.

(1) After making the necessary introductory and explanatory remarks on the purpose of and other matters related to the hearing, the ALJ will begin receiving testimony and evidence from the witnesses.

(2) Each party may present evidence and testimony and cross-examine or ask clarifying questions of any witness who presents evidence or testimony.

(3) In the request for relief or action of any kind, the party seeking such relief or action has the burden of proving entitlement to the same; provided, however, that the order of the proceeding may be altered or modified by the ALJ either upon agreement of the parties or upon his or her own motion when such action will expedite the hearing without prejudice to any party.

(4) When the party first proceeding finishes his or her case, the remaining party or parties will be allowed to present evidence and testimony in the same manner. Each witness is subject to cross-examination and clarifying questions by other participants.

(5) The ALJ may limit the number of witnesses whose testimony will be repetitious, and the ALJ may also establish time limits for testimony so long as all viewpoints are given a reasonable opportunity to be expressed.

(6) The ALJ at his or her discretion, may allow final arguments or take the case under advisement, and shall note the time and close the hearing. For sufficient cause, the ALJ may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record

(c) Consolidation. The ALJ, upon his or her own motion or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings before the agency shall not be consolidated without consent of all parties to such proceedings unless the ALJ finds that such consolidation will be

conducive to a fair, just, and proper hearing and will not result in unwarranted expense or undue delay.

(d) The hearing record. The hearing record will include:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings of them;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the ALJ; and

(7) all staff memoranda or data submitted to or considered by the ALJ or members of the agency who are involved in making the decision.

(e) Recording the hearing. The ALJ will keep either a stenographic or audio record of the hearing proceeding. In the event an independently contracted court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such a reporter. Any party desiring a written transcript of the proceedings shall contract directly with such court reporter and be responsible for payment of same pursuant to the authority of the Administrative Procedure Act (APA). In those cases when a tape recording of the formal hearing is made, the board shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the board necessitating the forwarding of the record to a court of law, the board may assess the cost of the transcript to the appealing party.

(f) Rules of evidence. The ALJ, at a hearing, a reopened hearing, or a rehearing will apply the rules of evidence under the APA, and the following rules.

(1) Consolidation. The ALJ may consolidate the testimony of parties or persons if the evidence can be effectively consolidated into one document or the testimony of one witness. The standard by which the ALJ should judge this consolidation is whether each party or person can offer unique or new evidence that has not been previously introduced. Any party, under oath, may make an offer of proof of the testimony or evidence excluded through consolidation by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing.

(2) Documentary evidence. Documentary evidence should be presented in its original form but if the original is not readily available, documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the ALJ may limit those admitted to a number which is typical and representative, and may at his or her discretion, require the abstracting of the relevant data from the documents and presentation of the abstracts in the form of exhibits; provided, however, that before making such requirement, the ALJ shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made. Any party may make and offer of proof of the documents from which are excluded by an ALJ's decision to remove only typical or representative documents.

(3) Exhibits.

(A) Form. Exhibits of documentary character shall be limited to facts material and relevant to the issues involved in a particular proceeding, and the parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the board.

(B) Tender and service. The original of each exhibit offered shall be tendered to the ALJ or a designee for identification and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

(C) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, it shall be given an exhibit number for the purposes of identification and shall be included in the record under seal.

(D) After hearing. Unless specifically directed by the ALJ, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing except in a reopened hearing or rehearing.

(4) Admissibility of prepared testimony and exhibits. When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what his or her testimony would be if he or she were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and his or her prepared testimony shall be subject to a motion to strike either in whole or in part.

(5) Offer of Proof. When testimony is excluded by the ALJ, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the

hearing, and such offer of proof shall be sufficient to preserve the point for review by the Board. The ALJ may ask such questions of the witness as he or she deems necessary to satisfy himself or herself that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

(6) Official notice. Official notice by the ALJ of the board shall be in accordance with the APA. Official notice may be taken of any statute, ordinance, or duly promulgated and adopted rules or regulations of any governmental agency. The examiner shall indicate during the course of a hearing that information of which he or she will take official notice. When an examiner's findings are based upon official notice of a material fact not appearing in the evidence of record, the examiner shall set forth in his or her proposal for decision those items with sufficient particularity so as to advise the parties of the matters which have been officially noticed. The parties shall have the opportunity to show to the contrary through the filing of exceptions to the ALJ's proposal for decision.

**§801.369. Action After the Hearing.**

(a) Reopening of hearing for new evidence.

(1) The board may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of hearing.

(2) The board will reopen a hearing to include such new evidence as part of the record if the board deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(3) Notice and procedural requirements will be the same as for the original hearing.

(b) Proposal for decision.

(1) The ALJ shall prepare the proposal and provide copies of the same to all parties.

(2) Each party having the right and desire to file exceptions and briefs shall file them with the ALJ within the time designated by the ALJ.

(3) Parties desiring to do so shall file written replies to these exceptions and briefs as soon as possible after receiving same and within the time designated by the ALJ.

(4) All exceptions and replies to them shall be succinctly stated.

(c) Pleadings after close. At any time after the record has been closed in a contested case, and prior to the administrative decision becoming final in such case, all briefs, exceptions, written objections, motions (including motion for rehearing), replies to the foregoing, and all other written documents shall be filed with the ALJ. The party filing such instrument shall provide copies of the same to all other parties of record by first class United States mail or personal service and certify, in writing thereon, the names and addresses of the parties to whom copies have been furnished, as well as the date and manner of service.

(d) Final orders after the decision.

(1) The final order or decision will be rendered by the board.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and the conclusions required by law, either in the body of the order or by reference to the ALJ's proposal for decision.

(3) All final orders shall be signed by the executive director and the chair of the board; however, interim orders may be issued by the ALJ in accordance with his or her order of appointment.

(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(e) Motion for rehearing. A motion for rehearing shall be in accordance with the APA, or other pertinent statute and shall be addressed to the executive director of the board and filed with the ALJ.

(f) Appeals. All appeals from final board orders or decisions shall be in accordance with the APA or other pertinent statute and communications regarding any appeal shall be to the executive director of the Board.